

Mr. Wikse was hired by DHW in June of 1992 as a DP (data processing) Systems Analyst, Supervisor in DHW's Division of Information Systems. Wikse received an overall rating of "very good" on his first performance evaluation for the period ending January 31, 1993. The rating supervisor was Bev Lindsay. In May, 1993 Wikse was promoted to DP Manager, Development. Following the promotion, Wikse received another "very good" overall rating for the period ending January 4, 1994. The rating supervisor for the period was Larry Tippetts. For the rating period ending January 1, 1995, Wikse received an overall rating of "often exceeds expectations." This rating was again prepared by Larry Tippetts, and was approved by Gary Haar, who had been appointed Acting Administrator of information systems (ISD) at the beginning of January, 1995.

Wikse's employment problems, which culminated with his termination in August, 1996, began about the time that Haar became the acting administrator of ISD. In August, 1995, Wikse's job duties underwent substantial change. Wikse expressed concerns about the changes to both Tippetts and Haar. Wikse felt that projects he had been managing, and for which he was qualified, had been reassigned and he had been given projects for which he was not qualified. He was also worried that the changes would give him more personnel to manage and he would only have one supervisor to assist him. Wikse believed he was being set up to fail, and said so to Haar.

In October, 1995, Haar spoke with Russ Liddell, who was then the human resource specialist assigned to ISD. Haar told Liddell that he had to terminate an employee (Haar identified the employee as Wikse) and sought Liddell's advice in making that happen. Liddell testified that it was evident in his discussions with Haar that the issue was not how to manage an employee with performance problems in order to resolve the problems, but rather how to fire the employee. Haar told Liddell during their conversation that the problems with Wikse were performance related and indicated that Wikse was having problems at work, that Haar had reassigned him due to high level complaints, and that he couldn't communicate or do his job. Liddell inquired regarding Wikse's performance evaluations and learned that they were all above average, and that he had received a

merit increase in June of 1995. Wikse's personnel file contained no documentation regarding oral warnings, no written warnings, and no adverse personnel actions. Liddell advised Haar of the importance of documenting that performance problems, corrective actions, and progress or lack thereof be communicated to Wikse.

Before Tippetts prepared Wikse's performance evaluation for the 1995 year, Haar told Tippetts to use the evaluation to give Wikse a "wake-up call." Wikse's 1995 performance evaluation gave an overall rating of "meets expectations" and contained the following comment from Tippetts:

David has met the expectations of his position over the past year and has achieved many accomplishments. He has been a hard worker and reliable manager over many of the Department's automated applications. If he accomplishes the goals identified in this document, he can increase his value even further.

Haar agreed with the rating and accepted the cited comments.

Wikse believed that the rating in the 1995 evaluation was too low. He provided a detailed outline of his concerns on two occasions but no substantive changes were made to the evaluation. Wikse grieved the issue of his 1995 evaluation, taking his grievance as far as an impartial review panel. The panel recommended that the review should stand, but noted that "sufficient consideration to Mr. Wikse's large area of responsibility and accomplishments were not given" in the evaluation. It noted that most of the problems seemed to stem from a lack of communication between Wikse and his immediate supervisor, Tippetts. The panel further recommended that "[a] more detailed Performance and Development Goal plan be developed whereby both the grievant and his supervisor develop specific methods of measurement, completion dates, and ways in which to increase efficiency." The director of DHW made no changes to the 1995 evaluation as a result of the impartial review.

At the beginning of January, 1996, Tippetts was transferred, and Haar appointed Carol Boylan as acting bureau chief of systems development. As bureau chief, she became Wikse's

immediate supervisor. Boylan had expressed concerns to Haar about her appointment, especially as it related to supervising Wikse, because she and Wikse had conflicts in the past.

In early March, 1996 an event occurred which resulted in Boylan writing a “letter of concern” to Wikse accusing him of unprofessional behavior. The events which initiated the letter of concern involved the placement of an ad for a system’s analyst. Due to a misunderstanding on the part of Russ Liddell, who was working with Wikse on the advertisement, the wrong ad was placed. The error was discovered and corrected before the advertisement ran and Mr. Liddell took responsibility for the miscommunication. Although these facts were pointed out by Wikse in his response to the letter, Boylan refused to remove it from Wikse’s file.

Witse grieved the matter of the letter of concern up to the impartial review level. The impartial review panel that heard the grievance regarding the evaluation also heard the grievance regarding the letter of concern. In its findings, the panel stated:

the panel is of the opinion that the Letter of Concern is inappropriate . . . While it is debatable whether he [Witse] should or should not have bowed to the Human Resource Specialists’ insistence, *the behavior of the acting supervisor was uncalled for and unprofessional*. The backbone of a good manager is to get the facts prior to addressing the issue with the employee. Ms. Boylan did not speak with the Human Resource Specialist prior to talking to the employee. Further, Ms. Boylan did not “discuss” the issue with the employee but rather berated the employee for failing to complete “the simplest of tasks”. Any employee confronted with this attitude would most likely respond in a defensive and slightly angry manner. The panel also felt that addressing an incident that occurred in the prior year and while not under the supervision of Ms. Boylan was inappropriate.

Exhibit 119 (emphasis added). The panel’s recommendation was that the letter of concern should be removed from Wikse’s personnel file. The Director’s final decision on the grievance was issued May 29. The final decision determined that the letter of concern should remain in the supervisor’s file “since this is the only record of your performance under her supervision.”

While Wikse’s grievance was in process, Carol Boylan asked to step down as acting bureau chief. She was replaced by Jim Koci effective April 1, 1996. Pursuant to the director’s final

decision, Koci prepared a new work plan for Wikse and submitted it to Wikse for review. Wikse provided some minimal input and the final work plan was given to him on June 19, 1996 with the notation from Koci that “the plan is to be abided by meticulously and will be the basis of your next performance evaluation.” On June 16, 1996 Wikse received a 2.5 percent merit increase for satisfactory performance.

On July 9, 1996 a co-worker of Wikse’s (Dana Thorne) reported to Haar that in a conversation with Wikse nearly a month before, Wikse had stated that “someone” should throw Carol Boylan a “blanket party,”¹ and that “someone ought to take out Larry Tippets.” The time and place of this conversation is the subject of some dispute. Thorne advised Haar that he didn’t take the comments seriously and that he thought Wikse was just “venting.” Thorne only reported the comments a month after their occurrence as a result of a conversation with another ISD employee, Tom Kulm. Kulm related to Thorne the general substance of a conversation which Kulm and Wikse had in which Wikse expressed frustration with his work situation and stated that he was going to put a “hit” on Tippets. The record demonstrates some uncertainty as to when the Kulm/Wikse conversation occurred and when the Kulm/Thorne conversation occurred. When asked by Haar about his conversation with Wikse, Kulm testified that he didn’t report the conversation to Haar because he “didn’t really believe it was going to happen” and “I just thought he was venting his frustrations.” (Tr. pp. 460, 461, 454, 483, 484, 489). Neither Thorne nor Kulm offered to put their statements in writing, nor did Haar initially ask them to.

Approximately a week after being informed of Kulm’s and Thorne’s conversations with Wikse, Haar asked Thorne to put his statement in writing; Kulm was first asked to make a written statement several days later. Thereafter, Haar prompted both individuals more than once to put

¹ The phrase “blanket party” is apparently susceptible to several meanings, depending upon one’s life experiences. At least three definitions were proffered by the various witnesses during the hearing. Whether this phrase constituted a threat, and if so, the seriousness of the threat, depends upon an individual’s belief as to what the phrase means.

their statements in writing. Haar testified that he took Wikse's statements seriously and not as "venting" because he believed that if Thorne and Kulm were willing to put it in writing, they must have serious concerns that Wikse might actually do something.

On July 10, based only on the conversations with Thorne and Kulm, Haar told Tippetts that Wikse had threatened to "take his [Tippetts] life." The same day Boylan was informed that Wikse had threatened harm to her. By July 10 or 11, only one or two days following Thorne's initial conversation with Haar regarding Wikse's statements, rumors were circulating that Wikse had been accused of making death threats against Tippetts. By the time that Wikse was placed on administrative leave on July 23, rumors that Wikse had threatened to kill Tippetts and Boylan were circulating throughout ISD.

Wikse heard the rumors that he had threatened to kill Tippetts when he returned from vacation on July 10, and asked that the allegations be investigated. Liddell advised Haar and Koci on July 11th that the allegations should "be reviewed in a fair, sensible and sensitive way quickly and either dismissed, clarified, or acted upon in some appropriate way." (Exhibit 129). Haar testified that no investigation into Wikse's alleged threats was undertaken until after written statements were received from Thorne and Kulm two weeks after the allegations came to light. During this time, Wikse continued to report to work.

On July 23, 1996, Haar provided Wikse with copies of the Thorne and Kulm statements and asked for an immediate response. Wikse asked if he could have some time to review the statements and respond. Haar placed Wikse on administrative leave and directed Wikse to meet with an Employee Assistance Program (EAP) counselor on July 26. When Wikse reminded Haar that he was scheduled to undergo knee surgery on the 24th, and asked if the EAP appointment could be rescheduled, his request was denied. Wikse kept the appointment on the 26th.

Wikse prepared and submitted detailed rebuttals to the Thorne and Kulm statements (Exhibits 126 and 128). The rebuttals are dated July 28. In pertinent part, the rebuttal to the Thorne statement disputes the place and time of the initial Thorne/Wikse conversation together with some of the substance. Wikse states in his rebuttal that Carol Boylan was not a topic of discussion, that Thorne referred to Tippetts as “The Weasel,” and that Wikse suggested that “someone” should throw a “blanket party” for Tippetts. The rebuttal to the Kulm statement confirms that Wikse and Kulm had a conversation, but disputes that the conversation included anything pertaining to Tippetts or Boylan. Further, the rebuttal raised several issues regarding the credibility of Kulm.

On the same date that Wikse was placed on administrative leave, Jeanne Goodenough, chief of the human services division of the office of the attorney general, and counsel to DHW, and Judi Diffendaffer, personnel supervisor for DHW, met with Kendra Kenyon-Bertsch, a therapist for the EAP. According to Ms. Kenyon, the purpose of the meeting was to discuss Wikse and obtain guidance from Kenyon regarding how to proceed. Goodenough and Diffendaffer provided Kenyon with copies of the Kulm and Thorne statements, and generally discussed the potential for violent behavior and performance issues going back several years. The record is not clear as to what advice Kenyon provided to Goodenough and Diffendaffer during the July 23 meeting except that DHW should refer Wikse to EAP and ensure that he had a support system in place.

Another meeting was held with Kenyon on August 5. In attendance at that meeting were Goodenough, Diffendaffer, Koci, and Haar. At the August 5 meeting, Kenyon was provided copies of Wikse’s rebuttals to the Thorne and Kulm statements, and other documentation going to the credibility (or lack thereof) of Kulm. The record reflects that the information provided to Kenyon was one-sided. Kenyon never met with or spoke to Wikse, nor did she receive input from anyone who might have been considered to be sympathetic to Wikse. Some of the information she received was incorrect or misleading. Kenyon was clear in her testimony that she did not provide any kind of

a “prognosis” regarding any threat that Wikse may pose. She recommended that a supervisory referral to EAP be made in order to obtain such a prognosis.² Kenyon testified that she believed that those in attendance at the meeting had an open mind about Wikse and his future.

I think that they were trying to continue to work with this employee and to make it work. And they were looking for other options and avenues, or they wouldn't have been there. I think they would have gone ahead and terminated him.

(Tr. p. 563).

On August 9, 1996, Haar gave Wikse a notice of contemplated disciplinary action. In summary, the notice advised that Haar was contemplating Wikse's dismissal for violation of IDAPA 28.01.01.190.01.b (inefficiency, incompetency, or negligence in performing duties) and IDAPA 28.01.01.190.01.e (insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department). The particulars asserted included:

1. Failure to progress on the requirements of the June 14, 1996 work plan;
2. Failure to accept responsibility for improving performance;
3. Failure to follow quality assurance procedures with Medicaid system, requisition tracking system, and DHW's home page;
4. Failure to become involved in development projects including EDS, ICSES, WIC data warehousing, and welfare reform, not attending meetings, and not contributing to meetings;
5. Handling of the hiring of supervising analyst;
6. Overtime issues;

² By this time, Wikse had been seeing EAP counselor Margo Anneke for ten months, and as indicated previously, had met with her most recently on July 26.

7. Failure to communicate with supervisor regarding staff changes, EPICS and welfare reform program changes and production failures. Status reports showed no improvement after repeated requests; and

8. Threats against Tippetts.

On August 13, Wikse submitted a detailed response to the notice of contemplated action. (Exhibit 138). On August 15, 1996, Wikse received his notice of dismissal. Accompanying the dismissal notice was a special performance evaluation with an “unsatisfactory” rating.

Wikse grieved the dismissal. An impartial review panel issued its conclusions and recommendations on September 24, 1996. Briefly, the impartial review panel concluded in pertinent part:

1. That while DHW “*may*” have grounds to terminate Wikse, they were poorly documented. Performance evaluations were consistently satisfactory or better. If performance issues arose as early as 1995 they should have been documented and discussed in the evaluation covering that time period. There was no progressive discipline.

2. That the evidence regarding the alleged threats was inconclusive. DHW had an obligation to investigate. Testimony was conflicting and some of the witnesses were not credible.

3. That Wikse “cannot return to the Department and be effective.” (Exhibit 146).

The panel recommended:

that the Department should reconsider its actions to avoid what could be time consuming and costly litigation. Accordingly, we recommend that the Department explore ways to settle this issue with Mr. Wikse.

The panel does not recommend that Mr. Wikse be reinstated. Reinstatement would create a very difficult situation for Mr. Wikse and several department employees.

(Exhibit 146).

The director’s decision upholding Wikse’s dismissal was filed October 3, 1996.

B. Appeal to Personnel Commission.

Wikse filed a timely notice of appeal to the Commission on October 23, 1996. Wikse sought reinstatement, compensation for lost salary and benefits, and attorney fees. The appeal was heard on February 11-13, 19, and April 15, 17-18, 1997. The appeal was decided on purely factual grounds.

The hearing officer issued 81 findings of fact and twelve conclusions of law. The critical portions of the conclusions of law can be summarized as follows:

1. The notice of contemplated action was based upon unsatisfactory performance and threats of violence against two former supervisors. Neither basis was supported by the record;
2. Wikse's dismissal for inefficiency or negligence in performing duties was not supported by substantial competent evidence;
3. Wikse's dismissal for insubordination, conduct unbecoming a state employee or conduct detrimental to the good order and discipline of the department was not supported by substantial competent evidence;
4. Wikse's claims of harassment by management, lack of support by management, unfair performance evaluations, and wrongful accusations of threatening injury were supported by substantial competent evidence; and
5. "Upon consideration of all of the evidence and having observed the demeanor of witnesses, the Department has failed to prove by a preponderance of the evidence that its disciplinary dismissal of Wikse was for proper cause." (Findings of Fact, Conclusions of Law, and Order, p. 35).

The hearing officer ordered that Wikse be reinstated with back pay and benefits and awarded him attorney fees and expenses in the amount of \$22,894.58.

DHW filed a timely petition for review alleging that the majority of the hearing officer's findings were unsupported and that he had made legal errors in ruling on evidentiary matters.

II.

ISSUES

- A.** Did the hearing officer err in his determination that DHW failed to prove, by a preponderance of the evidence, that Wikse had violated Rule 190.01.b (inefficiency, incompetency, or negligence in performing duties)?
- B.** Did the hearing officer err in his determination that DHW failed to prove, by a preponderance of the evidence, that Wikse had violated Rule 190.01.e (insubordination or conduct unbecoming a state employee or conduct detrimental to the good order of the department)?
- C.** Were the hearing officer's findings of fact supported by substantial competent evidence?

III.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review on disciplinary appeals to the IPC is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 28.01.01.201.06. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and IDAPA 28.01.01.190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Dep't of Health and Welfare, IPC No. 94-03 (February 21, 1996), *aff'd* Case No.

IV.

ANALYSIS

This petition presents no issues of law. The questions before the Commission are whether DHW established proper cause for Wikse's termination by a preponderance of the evidence and whether the hearing officer's findings of fact are supported by substantial, competent evidence. These issues are inextricably entwined because they involve issues of credibility and proof.

A. Credibility Issues.

The hearing officer raised issues concerning the credibility of some of DHW's witnesses, finding specifically that neither Gary Haar nor Tom Kulm were credible witnesses (Findings 63, 77, and 29). The transcripts raise questions regarding the credibility of other DHW witnesses. The impartial review panel also found some of DHW's witnesses lacked credibility. The hearing officer was in a position to judge the credibility and relative credibility of all of the witnesses. Where credibility is an issue, we rely on the determinations made by the hearing officer. See *Starr v. Idaho Transp. Dept.*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990), *Department of health and Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

B. The hearing officer correctly determined that DHW failed to prove, by a preponderance of the evidence, that Wikse had violated Rule 190.01.b.

We limit our analysis to the issues of proof regarding the allegations contained in the notice of dismissal. The Commission notes that as late as June 16, 1997, Wikse's performance was rated satisfactory and he received a 2.5 percent merit increase. Evidently, concerns about

his performance did not surface until some time after Wikse had been placed on administrative leave.

DHW alleged that Wikse had failed or refused to prepare his workplan. Testimony in the record indicates that Koci and Wikse discussed preparation of the plan and Koci agreed to prepare it.

DHW alleged that Wikse failed or refused to participate in review of the workplan. Evidence in the record indicates that Wikse reviewed and made minor suggestions to Koci regarding the plan before it became final.

DHW alleged that Wikse had failed to progress on the requirements of the June 14 work plan. The record is clear that Wikse received the final work plan on June 19 and that he was in the office a total of 13 days from that date until the date he was placed on administrative leave. At the time he was placed on administrative leave no deadlines were missed and no status reports had been requested of Wikse.

DHW alleged that Wikse had failed to accept responsibility for improving his performance, citing Wikse's failure to accomplish goals that were a part of his 1995 evaluation. The record demonstrates that the June 14 work plan was the only plan on which Wikse was to be evaluated and that no other performance goals (written or unwritten) were to be included in the work plan.

DHW alleged that Wikse had failed to follow quality assurance procedures prior to putting three programs (Medicaid, requisition tracking, and the home page) into production, failed to follow standards for development of the home page, and failed to communicate vital information to quality assurance. These items were not detailed on the work plan which was to guide his performance during the period in question. Documentary evidence supports Wikse's testimony that both the Medicaid and requisition tracking projects were in customer acceptance testing at the time Wikse was placed on administrative leave. Testimony and exhibits demonstrated that the home page

project was a new application for which no development standards existed, that the program was put into production at the request of DHW management, that Wikse's staff involved quality assurance staff throughout the development of the project and that Wikse notified quality assurance staff that the project was going into production on the same date he learned the information.

DHW alleged that Wikse had failed to involve himself on development projects such as EDS, ICSES, WIC Data Warehouse and welfare reform. These items were not included on the work plan. DHW offered no testimony or evidence in support of the allegation.

DHW alleged that Wikse would fail to attend meetings or appear then withdraw and that when he stayed in meetings he did not contribute. DHW provided no credible evidence to support these allegations. At the hearing, Haar made a general statement that he had heard that Wikse had not attended some EPICS meetings. EPICS was removed from Wikse's responsibilities in April, 1996. Wikse's performance prior to June 14, 1996 is not an issue.

DHW alleged that Wikse had handled the hiring of a supervising analyst inappropriately. The record reflects that Wikse and Koci had a disagreement about which candidate to hire for a position which Wikse would supervise. Wikse testified that he scored the candidates and rated his choice the highest. Wikse acquiesced to Koci's choice when Koci made it clear he would not approve the hiring of Wikse's choice.

DHW alleged that Wikse violated overtime policies. The record is clear that overtime was an accepted part of life in the ISD. Wikse had used overtime as necessary and it had always been approved. On June 25, Koci advised Wikse that he could not work overtime without prior approval. Wikse requested ten hours per week of discretionary overtime. The request was denied. On June 26 Wikse worked overtime to accomplish a project. Wikse may have violated DHW's overtime policy. So, according to the record, did a number of other DHW employees in the ISD. While not excusing Wikse, DHW's inconsistent application of its overtime policy does nothing to support its decision to discipline Wikse for violating the policy.

DHW alleged that Wikse had failed to communicate with his supervisor, Koci. In particular, Haar mentioned EPICS, staff changes, welfare reform program changes and production failures. The record indicates that EPICS and welfare reform had been removed from Wikse's area of responsibility in April, 1996. Further, the record is replete with status reports from Wikse to Koci regarding current projects.

DHW's allegations of ineffectiveness, incompetence, or negligence find little support in the record. Some allegations are without supporting evidence of any kind. Where DHW provided testimony in support of its allegations, the testimony is contradicted either by documentary evidence or more credible testimony presented by Wikse. We agree with the hearing officer that DHW failed to prove, by a preponderance of the evidence, that Wikse was inefficient, incompetent or negligent pursuant to IPC Rule 190.01.b.

C. The hearing officer correctly determined that DHW failed to prove, by a preponderance of the evidence, that Wikse had violated Rule 190.01.e.

Again, we limit our analysis to the issues of proof regarding the allegations contained in the notice of dismissal.

DHW alleged that Wikse had threatened Tippetts. The alleged threats against Boylan which were the subject of much testimony, were not included in the notice of dismissal. Sifting through the record reveals the following salient points regarding the alleged threats against Tippetts:

1. Wikse admitted stating that "somebody" should throw a "blanket party" for Larry Tippetts;
2. The meaning of the phrase "blanket party" is open to several interpretations, not all of them threatening;
3. Haar's statements to others regarding the alleged threats went far beyond what Kulm and Thorne claim they told him;
4. Haar misrepresented when he told Tippetts and Boylan that Wikse had threatened their lives;
5. Neither Thorne nor Kulm took Wikse's statements seriously;

6. DHW “was unequivocally told by EAP that David Wikse presented no threat to his fellow employees.” (Tr. p. 252).

We agree with the hearing officer that DHW did not prove by a preponderance of the evidence that Wikse threatened the life of Tippetts (or Boylan). The alleged threats were the basis for the charge of insubordination, or conduct unbecoming a state employee or conduct detrimental to the good order of the department. This failure of proof results in large part from issues regarding the credibility of DHW’s witnesses.

D. The Findings of the Hearing Officer are Supported by Substantial, Competent, and Credible Evidence.

On petition for review, DHW challenged 60 of the 81 findings of fact and 9 of the 12 conclusions of law in the hearing officer’s decision. The record provides ample support for the findings. In particular, those findings which relate specifically to the allegations made in the notice of dismissal are supported both by testimony and by documentary evidence. The hearing officer’s determinations regarding witness credibility are supported by references to the record and are clearly noted in the findings. We find that the hearing officer’s findings of fact and conclusions of law are supported by substantial, competent, and credible evidence.

V.

CONCLUSION

For the reasons stated above, we AFFIRM the decision of the hearing officer. We also AFFIRM the decision of the hearing officer awarding to Wikse attorney fees and expenses in the amount of \$22,894.58. DHW is ordered to reinstate Wikse with full back pay and benefits.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-

5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 28th day of April, 1998.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Chair

/s/ _____
Peter Boyd

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

/s/ _____
Dale Tankersley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Decision and Order on Petition for Review in *David Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12, was delivered to the following parties by the method stated below on the 28th day of April, 1998.

FIRST CLASS MAIL

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STATEHOUSE MAIL

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/s/_____
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